

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA**

**BMG RIGHTS MANAGEMENT** )  
**(US) LLC, and ROUND HILL** )  
**MUSIC LP** )

Plaintiffs, )

v. )

Case No. 1:14-cv-1611(LOG/JFA)

**COX ENTERPRISES, INC.,** )  
**COX COMMUNICATIONS, INC.,** )  
**COXCOM, LLC** )  
Defendants. )

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**PROPOSED JOINT DISCOVERY PLAN PURSUANT TO RULE 26(f)**

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Rule 26 of the Local Rules of the United States District Court for the Eastern District of Virginia, and the Court's February 3, 2015 Order, Plaintiffs BMG Rights Management (US) LLC and Round Hill Music LP ("Plaintiffs") and Cox Enterprises, Inc., Cox Communications, Inc., and CoxCom, LLC ("Defendants") submit this Joint Discovery Plan.

Concurrently with this discovery plan, the parties will file a joint Motion to Extend Discovery Deadlines and Continue Final Pretrial Conference, requesting a 60-day extension of the current deadlines. If that motion is granted, it will resolve certain timing disputes and permit a more reasonable phasing of discovery.

**I. MEETING**

On February 17, 2015, the parties conferred to consider the nature and basis of their claims and defenses, the possibility of a prompt settlement or resolution of the case, and trial

before a magistrate judge; to arrange for the disclosures required by Rule 26(a)(1); and to develop this discovery plan.

## **II. INITIAL DISCLOSURES**

The parties have agreed to serve their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) on or before March 6, 2015.

## **III. DISCOVERY PLAN**

The parties jointly propose the following discovery plan:

### ***A. Subjects:***

The scope of discovery will be governed by Federal Rule of Civil Procedure 26(b) and this Court's February 3, 2015 Order. (ECF No. 36.)

### ***B. Parties' Discovery:***

1. The Party with the burden of proof on an issue will serve opening expert report(s), as required by Fed. R. Civ. P. 26, no later than April 30, 2015.

2. Any party intending to file expert reports opposing the opening expert reports will serve the opposition reports, in accordance with Fed. R. Civ. P. 26, no later than May 14, 2015.

3. Any party intending to file reply expert reports will serve them no later than May 28, 2015.

4. All expert depositions must be completed by June 12, 2015.

5. June 12, 2015: Deadline for completion of Fact Discovery and Fact Depositions pursuant to this Court's February 3, 2015 Order.

### ***C. Pre-Trial Conference***

In accordance with this Court's Order dated February 3, 2015, the final pre-trial conference will be held on June 18, 2015 at 10:00 a.m.

#### **IV. STIPULATIONS**

##### ***A. Rolling Production***

Plaintiffs propose that the parties' document production shall be on a rolling basis, and document productions shall be substantially complete by April 3, 2015, except for productions responsive to document requests served after March 4, 2015. This date will allow Plaintiff 27 days to review the completed document production and prepare expert reports, which are due on April 30, 2015. If the date for the substantial completion of document discovery is on April 23, 2015, as the Defendants suggest, then there is only one week between the substantial completion of document production and the exchange of expert reports. Plaintiffs respectfully submit that one week is not enough time to adequately review the fact discovery and prepare the expert reports.

Defendants propose that the parties' document production will occur on a rolling basis, and document productions will be substantially complete by April 23, 2015, except for productions responsive to document requests served after March 24, 2015. Defendants do not believe that they can substantially complete their document production prior to April 23, 2015, and it will be extremely difficult if not impossible to meet that date. Given the current schedule, it is not reasonable or logical for Plaintiffs to expect 27 days between the completion of document production and expert reports. And because documents will be produced on a rolling basis, Plaintiffs will be receiving documents in advance of the substantial completion date.

If the parties' joint Motion to Extend Discovery Deadlines and Continue Final Pretrial Conference is granted, it will resolve these timing disputes and permit a more reasonable phasing of discovery.

***B. Privilege Logs***

Each party shall deliver its first privilege log three (3) weeks before the date that document productions will be substantially complete, a second privilege log on the date that document productions will be substantially complete, and a final privilege log within 14 days of substantial completion of its document production. Additional privilege logs must accompany any straggling document productions after substantial completion. Privileged communications, or attorney work product, created on or after the commencement of this action do not need to be included on the log. For purposes of creation of a privilege log, the parties may log attachments with the parent emails or documents. In addition, regarding emails that are part of an uninterrupted dialogue, the parties may only log the top email in the dialogue so long as the entry discloses that the e-mails are part of an uninterrupted dialogue.

***C. Electronically Stored Information:***

The parties have agreed to preserve all electronically stored information (“ESI”) that may be relevant to this matter and will cooperatively attempt to agree on specific terms for the production of ESI.

The parties agree that documents will be produced as single-page TIFFs with an .opt load file if requested by the receiving party. Extracted text files will be produced for all images. If extracted text is not available, images shall be OCR’ed and searchable whenever practicable. Parent-child relationships (association between an attachment and its parent document) must be preserved except where the attachment is otherwise not relevant to this litigation. Data will be de-duplicated across custodians. Each page of an imaged document must be Bates-stamped.

Any document that cannot be converted to TIFF, and any document that would become illegible or unusable when converted to TIFF, such as Microsoft Excel documents, must be

produced in native format. Documents produced in native format must be re-named to reflect the production number and any confidentiality designation under the Protective Order to be entered in this action. If documents produced in native format are printed for use in this litigation, the party printing the document must label each page of the file that is printed with the corresponding production number and a sequencing page number and any confidentiality designation under the Protective Order.

***D. Documents Received from Non-Parties***

Any Party which receives documents from a non-party pursuant to a subpoena shall make those documents available to any other Party, at the other Party's cost.

***E. Service:***

For all motions and other Court filings, the parties will serve each other via e-mail. The parties agree that e-mail service prior to 7:00 p.m. ET will count as hand service only for the purpose of calculating any applicable response dates. Any service made by email will be followed up with next-business-day delivery. In the case that email service is made after the close of business, the follow-up overnight mail service may occur by delivering the material to a courier the next business day for delivery on the next business day after that. The parties agree to exchange Word copies of all discovery requests on the date the discovery is served.

***F. Protective Order:***

The parties shall confer on the terms of an appropriate protective order that may be deemed necessary to protect confidential, proprietary information that may be exchanged during the course of discovery. The parties will file an appropriate motion for entry of a protective order on or before March 6, 2015.

***G. Amendments to Pleadings***

Any motion to join parties or amend pleadings shall be filed on or before March 28, 2015.

***H. Settlement Negotiations:***

The parties will discuss settlement opportunities and consider the possibility of a settlement conference as the case progresses.

***I. Trial:***

A jury trial has been demanded. The Plaintiffs expect the trial of this matter to last between seven and ten days. The Defendants expect the trial of this matter to last nine to ten days. The parties have not consented to trial before a Magistrate Judge.

Dated: March 4, 2015

Respectfully submitted,

/s/ \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2015, I electronically filed a true and correct copy of the foregoing using the Court's CM/ECF system, which then sent a notification of such filing (NEF) to all counsel of record:

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